

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

ISO New England Inc.)	
)	Docket No. ER14-463-000
)	

**NOTICE OF INTERVENTION AND PROTEST OF
THE MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES**

Pursuant to Rules 211 and 214(a)(2) of the Rules of Practice and Procedure¹ of the Federal Energy Regulatory Commission (“FERC” or “Commission”) and the Commission’s November 27, 2013 Combined Notice of Filings, the Department of Public Utilities of the Commonwealth of Massachusetts (“MA DPU”) hereby files its Notice of Intervention and Protest of ISO New England Inc.’s (“ISO-NE”) Exigent Circumstances Filing of Revisions to Forward Capacity Market Rules (“Filing”).²

The MA DPU respectfully asks the Commission to reject ISO-NE’s proposed rule revisions to change how the administrative price is calculated under the Insufficient Competition rule (“IC Rule”)³ and the Inadequate Supply rule (“IS Rule”)⁴ because ISO-NE has not met its burden under Section 205 of the Federal Power Act⁵ of proving that its proposed revisions to the ISO-NE Tariff⁶ are just and reasonable.⁷ In support of this Protest, the MA

¹ See 18 C.F.R. §§ 385.211 (Protests) and 385.214(a)(2) (Intervention).

² Exigent Circumstances Filing of Revisions to Forward Capacity Market Rules of the New England Power Generators Association, Inc. and Request for Fast Track Processing, Docket No. EL14-7-000 (filed Oct. 31, 2013).

³ See ISO-NE Tariff § III.13.2.8.2.

⁴ See ISO-NE Tariff § III.13.2.7.9.

⁵ 16 U.S.C. § 824e (2012).

⁶ Capitalized terms not defined in this filing are intended to have the meaning given to such terms in the ISO-NE Transmission, Markets and Services Tariff (the “Tariff”).

DPU incorporates by reference, adopts, and joins in the arguments set forth by the New England States Committee on Electricity (“NESCOE”) in its Motion to Intervene and Protest (“Protest”) filed separately on this date.⁸

I. INTERVENTION

The MA DPU is the agency of the Commonwealth of Massachusetts charged with general regulatory supervision over gas and electric companies in Massachusetts and has jurisdiction to regulate rates or charges for the sale of electric energy and natural gas to consumers. Massachusetts General Laws c. 164, § 76 et seq. Therefore, the MA DPU is a “state commission” as defined by 16 U.S.C. § 796(15) and 18 C.F.R. § 1.101(k). This notice of intervention has been filed within the period established under Rule 210(b). Accordingly, the MA DPU hereby intervenes in this proceeding pursuant to Rule 214(a)(2).

II. COMMUNICATIONS

The MA DPU requests that the individuals identified below be placed on the Commission’s official service list in this proceeding and that all communications related to this filing and future filings in this proceeding should be directed to:

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⁷ See *Blumenthal v. FERC*, 552 F.3d 875, 881 (D.C. Cir. 2009), quoting *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 10 (D.C. Cir. 2002).

⁸ Motion to Intervene and Protest of the New England States Committee on Electricity, Docket No. ER14-463-000 (filed December 16, 2013).

III. BACKGROUND

On November 25, 2013, ISO-NE made a filing pursuant to Section 205 of the Federal Power Act⁹ to alter certain market rules governing the Forward Capacity Market (“FCM”). ISO-NE submitted the Filing as an “Exigent Circumstances” filing under Section 11.2 of the Participants Agreement and requested that the revisions become effective on January 24, 2014.¹⁰ In its Filing, ISO-NE proposed revisions to: (1) remedy a gap it has identified in the triggering of the IC Rule (“IC Gap”); (2) modify the administrative pricing established by the IC Rule and the IS Rule when those rules are triggered; and (3) make three rule clarifications concerning certain definitions and treatment of particular resources under the IC Rule and the Capacity Carry Forward Rule.¹¹

The MA DPU’s comments focus on the changes to administrative pricing calculations. Currently, under the IC Rule, new resources are paid the Capacity Clearing price and existing resources are paid the lower of the Capacity Clearing Price or 1.1 times the Capacity Clearing Price for the most recent competitive Forward Capacity Auction (“FCA”).¹² Under the IS Rule, new resources are paid the FCA Starting Price and existing resources are paid 1.1 times the Capacity Clearing Price for the most recent FCA that did not have Inadequate Supply.¹³ ISO-NE’s proposed revisions would set the administrative price at \$7.025/kW-month, which was determined by using the Cost of New Entry from FCA 7, escalated using the Handy-Whitman Index, and multiplied by 1.1.

⁹ 16 U.S.C. § 824d (2006).

¹⁰ ISO-NE Filing at 1.

¹¹ ISO-NE Filing at 4.

¹² See ISO-NE Tariff § III.13.2.8.2.

¹³ See ISO-NE Tariff § III.13.2.8.1.

IV. PROTEST

The MA DPU incorporates by reference, adopts, and joins in the arguments set forth by NESCOE in its Protest filed separately this day. As NESCOE argues in its Protest, there are several reasons for the Commission to reject ISO-NE's proposed revisions with regard to the administrative pricing.

The MA DPU's primary concerns with the revisions to the administrative pricing rules are that these revisions result in a substantial transfer of wealth, on the order of more than one billion dollars,¹⁴ from consumers to existing generators with no benefits received in return and that ISO-NE is bypassing the stakeholder process without adequate justification to make such a change. ISO-NE has failed to demonstrate that its proposed revisions to the administrative pricing methodology are just and reasonable. Furthermore, as pointed out by NESCOE, ISO-NE has no obligation to consider consumer cost implications associated with its own preferences and because of that the stakeholder process is the only means under today's regional structure that is available to the states and others to make the impact on ratepayers a factor when identifying and evaluating potential solutions to issues.¹⁵ The MA DPU firmly believes that a meaningful opportunity for states and stakeholders to discuss the range of potential solutions is essential, particularly given the impact on New England ratepayers.

In addition to rejecting ISO-NE's proposed changes to the administrative pricing rules, the Commission should order ISO-NE to undertake a stakeholder process to review the triggers for the IC Rule. While NESCOE does not oppose the revision to address the IC Gap that

¹⁴ See NESCOE Protest at 25.

¹⁵ NESCOE Protest at 2.

ISO-NE proposes,¹⁶ the MA DPU is concerned that this is not the only logical flaw or issue that exists with the IC Rule. In response to a proposal by a Market Participant to include imports in the calculations for the IC Rule triggers, ISO-NE stated that it would like to look at fixing this matter for future auctions, but that it wanted to keep its fixes as narrow as it could because it was too close to the start of the next auction.¹⁷ The IC Rule revision may be necessary to address the logical flaw that ISO-NE identified, but this revision may not be sufficient to ensure that the IC Rule facilitates the proper functioning of the FCM.¹⁸ The MA DPU believes that stakeholders must have a reasonable opportunity to analyze all the issues associated with the IC Rule and to develop additional revisions, as appropriate.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, the MA DPU hereby files this Notice of Intervention and respectfully requests that the Commission recognize the MA DPU as an

¹⁶ ISO-NE Filing at 4, 7.

¹⁷ Minutes of November 18, 2013 Markets Committee Meeting, at 3-4, *available at* http://www.iso-ne.com/committees/comm_wkgrps/mrkt_comm/mrkt/mins/index.html.

¹⁸ It appears that there may be another logical flaw in determining whether there is Insufficient Competition. Under the IC Rule, there is a threshold requirement that there be more than 300 MWs of capacity offered by New Generating Capacity Resources and New Demand Resources (Section III.13.2.8.2.(b)(i)). The application of this requirement, however, can lead to counter-intuitive results. For example, if the resource deficiency is 50 MWs (amount between Existing Resources and the ICR) and 200 MWs of New Resources offer in, this is considered Insufficient Competition despite the fact that the amount of New Resources offered is four times the amount required; however, if the deficiency is 150 MWs and 300 MWs of new resources offer in, then this is not considered to be Insufficient Competition even though only twice the deficiency is offered. In both cases, 150 MWs more than the need are offered in and in one case it is considered Insufficient Competition and in the other it is not. *See* ISO-NE Tariff § III.13.2.8.2. If there is some perceived justification for the threshold requirement of 300 MWs, that justification should be analyzed and, if still adequate, it should be included within that section of the Tariff so that the section can withstand scrutiny on its own.

intervener in this proceeding, with all rights attendant thereto. In addition, the MA DPU respectfully requests that the Commission consider its comments and those filed by NESCOE in its Protest in this proceeding.

Respectfully submitted,
MASSACHUSETTS DEPARTMENT OF
PUBLIC UTILITIES

By its attorney,

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Date: December 16, 2013

CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010 (2008), I hereby certify that I have this day served, via electronic mail or first class mail, the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Boston, Massachusetts on this 16th day of December, 2013.

/s/ Jennifer M. Murphy
Jennifer M. Murphy